

are united subject to all their existing rights and liabilities at the time of their union, and that these are transferred to the new parish, which succeeds and represents them, and which, so to speak, carries on their life. I think, therefore, that a period of residence commenced in one of the united parishes before the union, and continued in the united parish after the union, must be considered as a continuous residence in a question of settlement, and therefore that M'Graw has acquired a residential settlement in the new parish.

As regards the case of the pauper Ross—the facts are that she was born in the City Parish of Glasgow, and became chargeable as a pauper on 11th July 1896.

It is not stated where her husband, Lockhart Ross, was born, and that does not appear to be material.

Lockhart Ross resided, and the pauper presumably with him, in the Pleasance, from 28th May 1885 till the 15th May 1892, a period of six years eleven months and two weeks. Up to this time the area of the Pleasance was situated within the St Cuthberts and Canongate Combination, and Ross had therefore then acquired for himself and his wife a residential settlement in the combination. At that date, however, this area was, by virtue of an order by the Boundary Commissioners, detached from the Combination, and included in the then City Parish of Edinburgh. Ross continued to reside in the Pleasance, which had been thus transferred, until his death on 9th December 1894—that is, a period of two years seven months and two weeks.

I think that the effect of the transference of the Pleasance from the Combination to the City Parish—as regards Ross's settlement—was just the same as if Ross had voluntarily left the Combination and gone to reside in the City Parish. The settlement, however, which he had acquired was liable to be lost by non-residence, *i.e.*, by non-residence for one year continuously in the Combination, during the period of five years subsequent to his ceasing to reside in it—that is, subsequent to 15th May 1892.

The question, accordingly, in this case appears to me to resolve into this—did Ross, or after his death did his wife, reside in the Combination for one year during the period of five years subsequent to 15th May 1892? and the answer to that question depends on the effect of the subsequent unification of the Combination and City Parish, which we have had to consider in M'Graw's case.

That unification took effect, as we have seen, on 15th May 1895. But if I am right in thinking, as I have said in M'Graw's case, that residence in the united parish must be held as equivalent to residence in any of the parishes composing it, then the pauper Ross has not lost her settlement in the Combination because she resided in the united parish, and therefore constructively in the Combination, from 15th May 1895 till 11th July 1896, when she became chargeable.

But there is this further specialty in the

case, that on 18th May 1895 the pauper changed her residence from the Pleasance to Big Lochend Close, which previous to the unification was in the Combination, and continued to reside there till she became chargeable, so that if the Combination in this question of settlement is to be treated as still existing, the pauper *de facto* resided within it for the period requisite to retain her settlement therein.

I am therefore of opinion that the pauper Ross is chargeable to the City Parish of Edinburgh.

LORD M'LAREN—I concur in all respects in Lord Adam's opinion. The effect of the union, as I conceive, is that each parish expands so that the whole of the aggregate area is City Parish, and is also St Cuthberts. If this principle be once admitted, there can be little doubt as to the consequences which follow. The necessary consequence is that the union makes no change in the settlement of anyone who has a settlement in either of the parishes.

THE LORD PRESIDENT and LORD KINNEAR concurred.

The Court affirmed the first alternative of both questions.

Counsel for First Party—Balfour, Q.C.—Guy. Agent—R. Addison Smith, S.S.C.

Counsel for Second Party—Shaw, Q.C.—Deas. Agents—W. & J. Burness, W.S.

Tuesday, January 4.

FIRST DIVISION.

DREW, PETITIONER.

Company — Rectification of Register — Paid-up Shares — Companies Act 1867 (30 and 31 Vict. cap. 131), sec. 25.

Shares bearing to be fully paid up were issued to A in pursuance of a written memorandum of agreement between him and the company, and in payment of certain options sold to the company by him, but the company omitted to file the contract with the registrar, in pursuance of sec. 25 of the Companies Act 1867. A brought a petition praying for the rectification of the register by striking out his name as holder of the shares in question, and that the company should be ordained, after filing with the registrar the memorandum of agreement or some contract to the same effect, to issue to him fully paid-up shares of the same nominal value and number as those he already held. The Court, after a remit to a reporter, granted the prayer of the petition.

This was a petition at the instance of Henry Drew, 33 Monmouth Road, London, for the rectification of the register of the United Industrial Corporation, Limited, incorporated under the Companies Acts 1862

to 1893, under the following circumstances:—Prior to the formation of the company a memorandum of agreement was entered into between Drew and a trustee for the company which was then in process of formation, by which Drew sold to the trustee certain options for the sum of £7500, payable either in cash or in fully paid-up shares, at the option of the company. The arrangement was adopted by the company, when formed, by a memorandum of agreement, dated 1st June 1897, and in pursuance of its terms 2000 shares, Nos. 1 to 2000 inclusive, were issued to Drew, with share certificates bearing that the shares were fully paid. No contract was, however, filed with the Registrar of Joint Stock Companies either at or before the issue of these shares. By section 25 of the Companies Act 1867 it is provided that "every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless it shall have been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares."

In his petition Drew stated that in the memorandum between him and the company it was provided that the company should procure the registration of the new memorandum or some proper contract with the proper officials before the issue of any fully paid shares, and should do whatever was necessary to ensure such shares being treated in all respects as fully paid. He also stated that the issue of the shares before any such contract was filed was due to a mistake on the part of the secretary of the company.

The prayer of the petition was in the following terms:—"May it therefore please your Lordships to order this petition to be intimated on the walls and in the Minute-Book in common form, and to be served on the United Industrial Corporation, Limited, and to ordain them to lodge answers thereto, if so advised, within eight days; and thereafter upon resuming consideration thereof, with or without answers, to declare that the name of the petitioner was improperly entered on the register of members of the said company in respect of two thousand shares in the company, numbered 1 to 2000 inclusive, before any sufficient agreement in respect of said shares was registered with the Registrar of Joint-Stock Companies, pursuant to section 25 of the Companies Act 1867; and to order that the register of members of said company be rectified by striking out the name of the petitioner as holder of the said two thousand shares, numbered Nos. 1 to 2000 inclusive, and that notice of this order be given to the Registrar of Joint-Stock Companies for Scotland; and further, to order that after the said memorandum of agreement, executed upon the first day of June 1897, between the petitioner of the first part, Frederick Adolphus Rawlings, of 27 Langbourn Chambers, Fenchurch Street, in the City of London, of the second part,

and the said The United Industrial Corporation, Limited, of the third part, or other sufficient agreement for the issue to the petitioner of such shares as fully paid up, shall have been duly filed with the Registrar of Joint-Stock Companies for Scotland, the said company allot or issue to the petitioner fully paid-up shares of the same nominal value and number as he now holds, as aforesaid, and in exchange for the certificates of the like shares now held by him, and to direct notice of the issue of said shares to be given to the said Registrar; and to find the said company liable to the petitioner in the expenses of this application, or to do otherwise or further in the premises as to your Lordships shall seem proper."

The petition was intimated and served, and no answers were lodged, whereupon the Court remitted to Mr C. B. Logan, W.S., to inquire into the facts and circumstances set forth in the petition, and the regularity of the proceedings.

The company lodged in process an acknowledgment that the petition had been served on them, and a consent by them to the cancellation of the 2000 shares in question, and the filing with the Registrar of Joint-Stock Companies of a new agreement for the issue of said shares as fully paid up.

There were also lodged in process—"Affidavits by the secretary of the company, and by one of the partners of the firm who act as London solicitors for the company, both dated 7th December 1897, to the effect that it was incumbent on the company to see that the contract for the issue of the shares was duly filed at or before the issue thereof; that the petitioner relied on the officials of the company doing whatever was necessary for his protection, and that he believed that they had done so until quite recently; that failure to file the contract was due to a difficulty having arisen in regard to the adjudication of the stamp-duty on the agreement, and that while negotiations were going on between the solicitors of the company and the Board of Inland Revenue, the secretary, *per incuriam*, issued the shares without consultation with and outwith the knowledge of the solicitors."

Besides these affidavits there was an affidavit "by the secretary of the company dated 7th December 1897, to the effect that the company has no creditors with the exception of the petitioner, the Edinburgh and London solicitors of the company, who have current bills of costs against the company, and the West Central Furnishing Company, from whom the company hold certain office furniture on a hire purchase agreement; that the company is solvent, and that it has sufficient funds in hand to pay the amounts of the solicitors' costs and for the furniture."

Mr Logan lodged a report, which, after stating the facts, proceeded—"So far as I am aware, only one similar petition for the rectification of the register of a company has come before the Scottish Courts and is reported, namely, that of *Harvey v. The*

Distillers' Company Limited, 11th March 1885, 22 S.L.R. 532, in which case The Distillers' Company were represented by counsel, and the Second Division of the Court of Session, being satisfied with the admission of the facts by the company and the *bona fides* of the application, granted the prayer of the petition without further inquiry. In the two cases of *Liquidators of Coustonholm Paper Mills Company, Limited v. Law*, 8th July 1891, 18 R. 1076, and *Furness & Company v. Liquidators of 'Cynthiana' Steamship Company, Limited*, 8th December 1893, 21 R. 239, it was held that as agreements relating to the amount paid up on certain shares of these companies had not been registered, the shares must be held as unpaid up, and the allottees placed on the list of contributors. Similar petitions for the rectification of the register of a company have, however, frequently come before the English Courts, and in one of the most recently reported, *The Darlington Forge Company*, 1887, L.R., 34 Ch. Div. 522, Mr Justice North, in reviewing previous cases, laid it down that the ignorance of the allottee as to the neglect to register the contract should be established, that the rights of creditors should be protected by provision being made for the existing debts of the company, and that the Court should see the agreement proposed to be filed by the Registrar of Joint Stock Companies."

The report proceeded to state that the reporter was satisfied with the *bona fides* of the application, that the facts and circumstances of the case, admitted by the company, were as set forth in the petition, and that the petitioner was ignorant of the neglect of the company's officials to file the memorandum of agreement; that the company appeared to be solvent, and therefore that advertisement might be dispensed with, and the prayer of the petition be granted.

The Court decreed in terms of the prayer of the petition.

Counsel for the Petitioner—Christie.
Agents—Anderson & Green, S.S.C.

Wednesday, January 12.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.]

NEALE THOMSON'S TRUSTEES *v.*
FINDLAY.

Superior and Vassal—Feu-Contract—Access—Right of Superior to Give Equivalent Access.

In 1873 a plot of ground was feued with free ish and entry to and from it by a road and by "the present avenue at the north-west boundary thereof so long as said avenue exists," which the superior was taken bound to keep open till a proposed lane of 15 feet in breadth was formed "on the site of said avenue" and thereafter by the said lane.

The avenue formed the north-west boundary of the feu for 60 yards, and then ran eastward for 200 yards and joined a public road.

Held (rev. judgment of the Lord Ordinary) that the superior was entitled to divert the site of a portion of the avenue which did not form the boundary of the feu, the diversion causing no inconvenience to the feuar as regards the access to his feu.

Hill v. Maclaren, July 19, 1879, 6 R. 1363, distinguished.

By feu-contract and charter of novodamus dated 29th July and 21st and 27th August 1873 the trustees of the deceased Neale Thomson of Camphill disposed to James Findlay and Mary Rodgerston M'Knight or Findlay, his spouse, three plots of ground of the lands of Langside within the parish of Cathcart, measuring respectively 1 acre 24 and 4/10th poles, 15 and 7/10th poles, and 9 poles, all lying together and bounded "on the north-west by the avenue leading to Langside House, which is to be converted into a lane of 15 feet in breadth, along which it extends 188 feet or thereby, . . . "with free ish and entry to and from the said plots of ground by the said road, formed or to be formed, 30 feet wide, and by the present avenue at the north-west boundary thereof, so long as said avenue exists, and which the first party and their foresaids shall be bound to keep open until the said proposed lane of 15 feet in breadth is formed (and thereafter by such lane of 15 feet in breadth when the same is formed) on the site of said avenue . . . And in the event of the foresaid lane of 15 feet in breadth being formed on the site of the said avenue, the second party and their foresaids shall also be bound to maintain in good order and repair one-half of said lane (including the footpaths therein, if any) so far as it passes along the plot of ground hereby feued."

The avenue after bounding Mr and Mrs Findlay's feu for 60 yards ran eastward for 200 yards and joined Mansionhouse Road.

On 8th June 1897 Neale Thomson's trustees and William Waddell, builder in Glasgow, raised an action against, *inter alios*, Mr and Mrs Findlay to have it found and declared "that the pursuers are entitled to alter a part of the site of the avenue which was formerly used as an access to the mansionhouse of the estate of Langside in the county of Lanark, and the site of which avenue is coloured brown on the plan herewith produced, either by shutting up or otherwise using as they may deem proper that part of said avenue lying between the points Aa and Bb shown on said plan, and substituting for said part lying between the points Aa and Bb a road or lane not less than 15 feet in breadth from the points Aa to the points Cc on the said plan, said proposed road or lane so to be substituted being coloured red on said plan; or otherwise by shutting up or otherwise using as they may deem proper that part of said avenue lying between the points Dd and Bb shown on said plan, and substituting for said part lying between the points Dd and Bb a road or lane not less than 15